

# Mental Health (Scotland) Bill

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## 1st Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the first day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

#### **Compulsory treatment**

1, 2, 3, 66, 4, 64

*Notes on amendments in this group*

Amendment 3 pre-empts amendment 66

#### **Transfers and hospital units**

93, 22, 23, 96, 112, 61, 62, 63

#### **Emergency detention in hospital**

67, 68, 69

#### **Suspension of detention**

5, 6, 7, 8, 94, 95, 9, 10, 11, 12, 13, 70, 14, 15, 16, 17, 18, 18A, 19, 19A 20, 71, 21, 21A

*Notes on amendments in this group*

Amendment 8 pre-empts amendment 94

Amendment 95 pre-empts amendments 9, 10, 11, 12, 13, 70

#### **Excessive security**

24, 25, 72, 26, 73, 74, 75, 76, 77, 27, 78, 79, 28, 29, 30, 31, 80, 32, 33

*Notes on amendments in this group*

Amendment 26 pre-empts amendment 73

#### **Nurse's holding power**

34, 97, 98, 35, 81

#### **Appeal on hospital transfer**

36

**Periodical referral of cases**

37, 38, 99

**Recording of late disposal**

100

**Psychotropic substances**

101, 102

**Named person**

103, 39, 40, 41, 42, 43, 105, 108

**Carers' involvement**

104

**Advocacy**

82, 83, 84

**Registration of advance statements**

44, 45, 46, 106, 107

*Notes on amendments in this group*

Amendment 46 pre-empts amendments 106, 107

**Advance statements: further provision**

85, 86, 87

**Effect of advance statements**

88

**Support, conflicts of interest and safeguarding patients**

47, 48, 49

**Services and accommodation for mothers**

50, 51

**Absconding patients**

52, 89, 90, 91, 53

*Notes on amendments in this group*

Amendment 52 pre-empts amendment 89

**Agreement to transfer prisoners**

54

**Meaning of mental disorder**

55, 56

**Information on adverse incidents**

109

**Review of deaths in detention**

110

**Detention under compulsion orders**

57

**Period of assessment order**

111

**Transfer of patients to suitable hospital**

58, 59

**Duty of Health Boards: homicide reporting**

92

**Referral to the High Court**

113

**Effect of restriction order**

65

**Right to information: compulsion order**

114, 115, 116

**Compulsion order: recorded matter**

117

**Involvement of curator ad litem: appeals**

118

**Practitioner psychologists**

119

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## Amendments in debating order

### Compulsory treatment

#### **Bob Doris**

- 1 In section 1, page 1, line 12, leave out <under section> and insert <by virtue of section 47(4)(a) or>

#### **Bob Doris**

- 2 In section 1, page 1, line 21, leave out <under section> and insert <by virtue of section 47(4)(a) or>

#### **Bob Doris**

- 3 In section 1, page 1, line 25, leave out subsections (4) and (5)

#### **Dr Richard Simpson**

- 66 In section 1, page 1, line 25, leave out subsection (4) and insert—
- <In section 68 (extension of short-term detention pending determination of application)—
- (a) in the text following paragraph (b) of subsection (1), for the words “are authorised” there is substituted “may be authorised by the Tribunal providing that either of the conditions set out in subsection (1A) are met”,
  - (b) after subsection (1) there is inserted—
    - “(1A) Those conditions are—
      - (a) that the Tribunal determines on its own initiative that the delay in determining the application made under section 63 is unavoidable; or
      - (b) that an application is made to the Tribunal by a person mentioned in subsection (1B) and the Tribunal is satisfied that the delay in determining the application made under section 63 is unavoidable.
  - (1B) Those persons are—
    - (a) the patient;
    - (b) if the patient has a responsible medical officer, that officer, but only with the consent of—
      - (i) the patient; or
      - (ii) where the patient is incapable of consenting, a person mentioned in paragraph (c); or
    - (c) where the patient is incapable of making the application—
      - (i) the patient’s named person;
      - (ii) any guardian of the patient;
      - (iii) any legal representative of the patient;
      - (iv) a person who, to the knowledge of the Tribunal, is providing independent advocacy services to the patient under section 259 of this Act.”,

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- (c) in subsection (2)(a), for the word “5” there is substituted “10”,
- (d) after subsection (2) there is inserted—
  - “(2A) Where the Tribunal authorises the measures mentioned in subsection (2), the Tribunal must give notice to the persons mentioned in subsection (2B)—
    - (a) of its authorisation;
    - (b) the reasons for its decision.
  - (2B) Those persons are—
    - (a) if the patient made or consented to the application, the patient;
    - (b) in all other cases—
      - (i) the patient’s named person;
      - (ii) any guardian of the patient;
      - (iii) any legal representative of the patient;
      - (iv) the patient’s responsible medical officer;
      - (v) a person who, to the knowledge of the Tribunal, is providing independent advocacy services to the patient under section 259 of this Act;
      - (vi) the Commission.”.>

### **Jamie Hepburn**

- 4** In section 2, page 2, line 8, leave out <101(2)> and insert <101(2)(a)>

### **Jamie Hepburn**

- 64** In section 41, page 25, line 12, leave out <165(2)> and insert <165(2)(a)>

## **Transfers and hospital units**

### **Jamie Hepburn**

- 93** After section 2, insert—
- <Transfer to another hospital**
- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
  - (2) In section 124 (transfer to other hospital)—
    - (a) in subsection (1), for the words “by a compulsory treatment order.” there is substituted “by—
      - (a) a compulsory treatment order, or
      - (b) an interim compulsory treatment order.”,
    - (b) in subsection (14), for the words “compulsory treatment order” there is substituted “order in question”.>

### **Jamie Hepburn**

- 22** After section 9, insert—

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### *<Specification of hospital units*

#### **Specification for detention measures**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 36 (emergency detention in hospital), after subsection (12) there is inserted—
  - “(13) A reference in this section to a hospital may be read as a reference to a hospital unit.
  - (14) For the purpose of subsection (13) above, “hospital unit” means any part of a hospital which is treated as a separate unit.”.
- (3) In section 44 (short-term detention in hospital), after subsection (11) there is inserted—
  - “(12) In this section and sections 46 to 49 of this Act, a reference to a hospital may be read as a reference to a hospital unit.
  - (13) For the purposes of subsection (12) above, “hospital unit” means any part of a hospital which is treated as a separate unit.”.
- (4) After section 71 there is inserted—

**“71A Compulsory treatment in hospital unit**

  - (1) In sections 62 to 68 of this Act, a reference to a hospital may be read as a reference to a hospital unit.
  - (2) For the purposes of subsection (1) above, “hospital unit” means any part of a hospital which is treated as a separate unit.”.>

#### **Jamie Hepburn**

**23** After section 9, insert—

#### **<Transfer of prisoner to hospital unit**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 136 (transfer of prisoners for treatment for mental disorder), after subsection (10) there is inserted—
  - “(11) A reference in this section to a hospital may be read as a reference to a hospital unit.
  - (12) For the purpose of subsection (11) above, “hospital unit” means any part of a hospital which is treated as a separate unit.”.>

#### **Jamie Hepburn**

**96** After section 9, insert—

#### **<Transfer from specified unit**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 124 there is inserted—

**“124A Transfer to other hospital unit**

  - (1) Subsection (2) below applies where—
    - (a) the detention of a patient in hospital is authorised by—

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- (i) a compulsory treatment order, or
- (ii) an interim compulsory treatment order, and
- (b) that order specifies the hospital unit in which the patient is to be detained.
- (2) The managers of the hospital in which the patient is detained may transfer the patient to another hospital unit within the same hospital.
- (3) In relation to a transfer or proposed transfer under subsection (2) above, section 124(4) to (14) of this Act applies subject to the following modifications—
  - (a) a reference to section 124(2) is to be read as a reference to subsection (2) above,
  - (b) subsection (10)(a) is to be ignored,
  - (c) in subsection (12), a reference to the hospital from which the patient is transferred is to be read as a reference to the hospital in which the patient is detained,
  - (d) in subsections (13)(b) and (14), a reference to the hospital to which the patient is transferred is to be read as a reference to the hospital unit to which the patient is transferred.
- (4) For the purposes of this section, “hospital unit” means any part of a hospital which is treated as a separate unit.”.>

### **Jamie Hepburn**

**112** Before section 36, insert—

#### **<Specification of unit**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) After section 61 there is inserted—

#### **“61B Specification of hospital unit**

- (1) A reference in this Part to a hospital may be read as a reference to a hospital unit.
- (2) In the operation of section 61A of this Act in relation to a transfer from one hospital unit to another within the same hospital—
  - (a) subsection (2) of that section applies by virtue of subsection (1) of that section where the order in question specifies the hospital unit in which the person is to be detained,
  - (b) in subsection (5) of that section—
    - (i) paragraph (b) is to be ignored,
    - (ii) in paragraph (c)(i), the reference to the managers of the other hospital is to be read as a reference to the managers of the hospital in which the person is detained.
- (3) For the purposes of this section, “hospital unit” means any part of a hospital which is treated as a separate unit.”.>

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### **Jamie Hepburn**

- 61 Leave out section 36

### **Jamie Hepburn**

- 62 Leave out section 37

### **Jamie Hepburn**

- 63 Leave out section 38

### **Emergency detention in hospital**

#### **Dr Richard Simpson**

- 67 In section 3, page 3, line 20, leave out <may, so far as they consider it appropriate> and insert <must, unless it is impracticable to do so>

#### **Dr Richard Simpson**

- 68 In section 3, page 3, line 22, at end insert—

<“(3B) Where it is impracticable for the managers of the hospital to notify any persons mentioned in subsection (4) below, they must notify any person who, to the knowledge of the managers, is providing independent advocacy services to the patient under section 259 of this Act.”>

#### **Dr Richard Simpson**

- 69 In section 3, page 3, line 25, leave out <and (3A)> and insert <, 3A and 3B>

### **Suspension of detention**

#### **Jamie Hepburn**

- 5 In section 8, page 5, line 22, at end insert—

<( ) in subsection (1), the words “not exceeding 6 months” are repealed,

( ) after subsection (1) there is inserted—

“(1A) A certificate under subsection (1) above may specify—

(a) a single period not exceeding 200 days, or

(b) a series of more than one individual period falling within a particular 6 month period.”,

( ) after subsection (3) there is inserted—

“(3A) A certificate under subsection (3) above may specify—

(a) a single period, or

(b) a series of more than one individual period.”>



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**Jamie Hepburn**

- 6 In section 8, page 5, line 27, at end insert—
- <( ) after subsection (2) there is inserted—
  - “(2A) A certificate under subsection (2) above may specify—
    - (a) a single period, or
    - (b) a series of more than one individual period.”,>

**Jamie Hepburn**

- 7 In section 8, page 6, line 2, at end insert—
- <( ) In subsection (2), the words “not exceeding 3 months” are repealed,
  - ( ) after subsection (2) there is inserted—
  - “(2A) A certificate under subsection (2) above may specify—
    - (a) a single period not exceeding 90 days, or
    - (b) a series of more than one individual period falling within a particular 3 month period.”,>

**Jamie Hepburn**

- 8 In section 9, page 6, leave out lines 17 to 26 and insert—
- <( ) for subsection (2) there is substituted—
  - “(2) The total period that an order does not, by reason of certification under subsection (1) above, authorise the measure mentioned in section 66(1)(a) of this Act must not exceed 200 days (or a higher total by virtue of subsection (10) below)—
    - (a) in the 12 month period beginning with the day on which the order is made, or
    - (b) in each subsequent period of 12 months.”,  - ( ) after subsection (2) there is inserted—
  - “(2A) For the purpose of subsection (2) above—
    - (a) a day does not count towards the total period if the measure is (by reason of such certification) not authorised for a period of 8 hours or less in that day,
    - (b) a single period (specified in such certification) of more than 8 hours and less than 24 hours, whether in one day or spanning two days, is to count as a whole day towards the total period.”,>

**Dr Richard Simpson**

- 94 In section 9, page 6, line 17, leave out from <(or> to <below)> in line 18

**Dr Richard Simpson**

- 95 In section 9, page 6, leave out lines 27 to 39

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### Jamie Hepburn

- 9 In section 9, page 6, line 29, after <by> insert <an order of>

### Jamie Hepburn

- 10 In section 9, page 6, line 30, leave out from <, but> to end of line 35

### Jamie Hepburn

- 11 In section 9, page 6, line 38, at end insert <once determined (including any order made in connection with it under subsection (11B) below)>

### Jamie Hepburn

- 12 In section 9, page 6, line 38, at end insert—
- <(11A)Where the Tribunal receives an application under subsection (10) above, the Tribunal must inform the patient and the patient’s named person—
- (a) that they may make representations (oral or written), and
- (b) of the result of the application once determined (including any order made in connection with it under subsection (11B) below).>

### Jamie Hepburn

- 13 In section 9, page 6, line 38, at end insert—
- <(11B)If the Tribunal decides not to make an order approving a higher total on an application under subsection (10) above, the Tribunal may make an order varying the compulsory treatment order to which the patient is subject so that it no longer authorises the measure mentioned in section 66(1)(a) of this Act.>

### Dr Richard Simpson

- 70 In section 9, page 6, line 39, leave out<300> and insert <230>

### Jamie Hepburn

- 14 In section 9, page 6, line 39, at end insert—
- <( ) In section 128 (suspension of other measures), in each of subsections (1) and (2), for the words “3 months” there is substituted “90 days”.>

### Jamie Hepburn

- 15 In section 9, page 7, leave out lines 3 to 12 and insert—
- <( ) for subsection (4) there is substituted—
- “(4) The total period that an order or direction does not, by reason of certification under subsection (2) above, authorise the detention of a patient in hospital must not exceed 200 days (or a higher total by virtue of subsection (11) below)—
- (a) in the 12 month period beginning with the day on which the order or direction is made, or
- (b) in each subsequent period of 12 months.”,
- ( ) after subsection (4) there is inserted—
- “(4A) For the purpose of subsection (4) above—

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- (a) a day does not count towards the total period if the detention is (by reason of such certification) not authorised for a period of 8 hours or less in that day,
- (b) a single period (specified in such certification) of more than 8 hours and less than 24 hours, whether in one day or spanning two days, is to count as a whole day towards the total period.”;>

**Jamie Hepburn**

- 16 In section 9, page 7, line 15, after <by> insert <an order of>

**Jamie Hepburn**

- 17 In section 9, page 7, line 16, leave out from <, but> to end of line 21

**Jamie Hepburn**

- 18 In section 9, page 7, line 24, at end insert <once determined (including any order made in connection with it under subsection (12B) below)>

**Jamie Hepburn**

- 18A As an amendment to amendment 18, line 1, leave out from <(including> to end of line 2

**Jamie Hepburn**

- 19 In section 9, page 7, line 24, at end insert—  
<(12A)Where the Tribunal receives an application under subsection (11) above, the Tribunal must inform the patient and the patient’s named person—  
(a) that they may make representations (oral or written), and  
(b) of the result of the application once determined (including any order made in connection with it under subsection (12B) below).>

**Jamie Hepburn**

- 19A As an amendment to amendment 19, line 5, leave out from <(including> to end of line 6

**Jamie Hepburn**

- 20 In section 9, page 7, line 24, at end insert—  
<(12B)If the Tribunal decides not to make an order approving a higher total on an application under subsection (11) above, the Tribunal may make an order varying the order or direction in question so that it no longer authorises the detention of the patient in hospital.>

**Dr Richard Simpson**

- 71 In section 9, page 7, line 25, leave out <300> and insert <230>

**Jamie Hepburn**

- 21 In section 9, page 7, line 25, at end insert—  
<( ) In section 320 (appeal to sheriff principal against certain decisions of the Tribunal), in subsection (1)—

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- (a) after paragraph (l) there is inserted—
  - “(la) a decision to make an order under section 127(11B) of this Act arising by virtue of an application under section 127(10) of this Act;”,
- (b) after paragraph (s) there is inserted—
  - “(sa) a decision to make an order under section 224(12B) of this Act arising by virtue of an application under section 224(11) of this Act;”.>

### **Jamie Hepburn**

- 21A** As an amendment to amendment 21, leave out lines 7 to 9

### **Excessive security**

#### **Jamie Hepburn**

- 24** Before section 10, insert—

##### **<Requirement for medical report**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 264 (detention in conditions of excessive security: state hospitals), after subsection (7) there is inserted—
  - “(7A) An application may not be made under subsection (2) above unless it is accompanied by a report prepared by a medical practitioner which—
    - (a) states that in the practitioner’s opinion the patient does not require to be detained under conditions of special security that can be provided only in a state hospital, and
    - (b) sets out the practitioner’s reasons for being of that opinion.”.
- (3) In section 268 (detention in conditions of excessive security: hospitals other than state hospitals), after subsection (7) there is inserted—
  - “(7A) An application may not be made under subsection (2) above unless it is accompanied by a report prepared by a medical practitioner which—
    - (a) states that in the practitioner’s opinion the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient, and
    - (b) sets out the practitioner’s reasons for being of that opinion.”.>

#### **Jamie Hepburn**

- 25** In section 10, page 8, line 11, leave out subsection (9)

#### **Dr Richard Simpson**

- 72** In section 11, page 8, line 17, leave out <first> and insert <second>

#### **Jamie Hepburn**

- 26** In section 11, page 8, leave out line 19 and insert—

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<( ) in subsection (2), for the words from “detention” to “patient’s case” there is substituted “the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient”>

**Dr Richard Simpson**

73 In section 11, page 8, line 19, leave out <each> and insert <the second>

**Dr Richard Simpson**

74 In section 11, page 8, leave out line 23

**Dr Richard Simpson**

75 In section 11, page 8, leave out lines 25 and 26

**Dr Richard Simpson**

76 In section 11, page 8, leave out line 29 and insert—

<( ) subsection (12) is repealed,

( ) in subsection (13), paragraph (b) is repealed,

( ) after subsection (14), there is inserted—

“(15) Regulations must specify the minimum period for which a patient must be detained before an application may be made under this section.

(16) Regulations may—

(a) make different provision for different purposes, including providing for different dates for the different measures of security or containment under which a patient is detained to come into force,

(b) include consequential, supplementary, incidental, transitional, transitory or saving provision.”>

**Dr Richard Simpson**

77 In section 11, page 8, leave out line 31

**Jamie Hepburn**

27 In section 11, page 8, leave out lines 32 and 33 and insert—

<( ) in subsection (3), for the words from “detention” to “patient’s case” there is substituted “the test specified in regulations made under section 271A(2) of this Act is met in relation to the patient”>

**Dr Richard Simpson**

78\* In section 11, page 8, line 36, at end insert—

<( ) In section 270 (orders under section 269: further provision)—

(a) in subsection (3), the word “qualifying” is repealed,

(b) in subsection (6), for the words “qualifying hospital” there is substituted “hospital in which the patient is detained”>

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**Dr Richard Simpson**

- 79 In section 11, page 8, leave out line 38

**Jamie Hepburn**

- 28 In section 11, page 9, leave out lines 1 and 2 and insert—

<( ) in subsection (2)(a), for the words from “detention” to “patient’s case” there is substituted “the test specified in regulations made under section 271A(2) of this Act is not met in relation to the patient”>

**Jamie Hepburn**

- 29 In section 11, page 9, line 2, at end insert—

<( ) After section 271 there is inserted—

*“Process for orders: further provision*

**“271A Regulation-making powers**

- (1) A hospital is a “qualifying hospital” for the purposes of sections 268 to 271 of this Act if—
  - (a) it is not a state hospital, and
  - (b) it is specified, or is of a description specified, in regulations.
- (2) Regulations may specify the test for the purposes of sections 268(2), 269(3) and 271(2)(a) of this Act.
- (3) Regulations under subsection (2) above specifying the test—
  - (a) must include as a requirement for the test to be met in relation to a patient that the Tribunal be satisfied that detention of the patient in the hospital in which the patient is being detained involves the patient being subject to a level of security that is excessive in the patient’s case, and
  - (b) may include further requirements for the test to be met in relation to a patient.
- (4) Regulations may make provision about when, for the purposes of—
  - (a) any regulations made under subsection (2) above, and
  - (b) sections 268 to 271 of this Act,a patient’s detention in a hospital is to be taken to involve the patient being subject to a level of security that is excessive in the patient’s case.
- (5) Regulations may modify sections 264 and 268 of this Act so as to provide that a person must meet criteria besides being a medical practitioner in order to prepare a report for the purpose of subsection (7A) in each of those sections.”>

**Jamie Hepburn**

- 30 In section 11, page 9, line 5, leave out <is authorised in hospital> and insert <in hospital is authorised>

**Jamie Hepburn**

- 31 In section 11, page 9, line 10, at end insert—

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<( ) In section 326 (orders, regulations and rules), in subsection (4)(c), for the words “268(11) to (14)” there is substituted “271A”.>

### **Dr Richard Simpson**

**80** In section 11, page 9, line 10, at end insert—

<( ) In section 326 (orders, regulations and rules), in subsection (4)(c), for the words “to (14)” there is substituted “and (13) to (16)”.>

### **Jamie Hepburn**

**32** After section 11, insert—

#### **<Meaning of hospital in sections 268 to 273 of the 2003 Act**

(1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

(2) In section 273 (interpretation of Chapter)—

(a) the words up to the end of the definition of “relevant patient” become subsection (1),

(b) after that subsection there is inserted—

“(2) In this Chapter, a reference to a hospital may be read as a reference to a hospital unit.

(3) For the purposes of this Chapter, “hospital unit” means any part of a hospital which is treated as a separate unit.”.>

### **Jamie Hepburn**

**33** Leave out section 12

### **Nurse’s holding power**

#### **Jamie Hepburn**

**34** In section 14, page 10, line 28, leave out <purposes mentioned in subsection (3A) below> and insert <purpose of enabling the carrying out of a medical examination of the patient by a medical practitioner>

#### **Nanette Milne**

**97** In section 14, page 10, line 30, leave out <paragraph (c) of>

#### **Nanette Milne**

**98** In section 14, page 10, line 30, after <subsection (3)> insert <—

(i) in the text following paragraph (b), the words “from leaving the hospital” are repealed,

(ii) in paragraph (c)>

#### **Jamie Hepburn**

**35** In section 14, page 10, leave out lines 33 to 39

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**Dr Richard Simpson**

81 Leave out section 14

### Appeal on hospital transfer

**Jamie Hepburn**

36 Leave out section 15

### Periodical referral of cases

**Jamie Hepburn**

37 In section 16, page 11, line 8, at end insert—

<( ) In subsection (3)(c) of section 101 (Tribunal’s duty to review determination under section 86), for the words “made to” there is substituted “determined by”.>

**Jamie Hepburn**

38 In section 16, page 11, line 23, leave out from <paragraph> to <are> in line 24 and insert <Schedule 2 (the Mental Health Tribunal for Scotland), paragraph 13A is>

**Dr Richard Simpson**

99 Leave out section 16

### Recording of late disposal

**Dr Richard Simpson**

100 Leave out section 17

### Psychotropic substances

**Adam Ingram**

101 After section 17, insert—

*<Safeguards for other medical treatment*

#### **Psychotropic substances**

(1) The Mental Health (Care and Treatment) (Scotland) Bill is amended as follows.

(2) After section 237, there is inserted—

**“237A Psychotropic substances**



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- (1) Medical treatment mentioned in subsection (2) below may be given to a patient who has a mental disorder only in accordance with the requirements set out in subsection (3).
- (2) The medical treatment referred to in subsection (1) is treatment by way of psychotropic substances.
- (3) The requirements are—
  - (a) where practicable, the patient has been afforded the opportunity to choose the medical practitioner to administer such treatment;
  - (b) the patient has been provided with information, as appropriate, about the treatment or range of treatments, as the case may be, as an alternative to treatment by psychotropic substances;
  - (c) a medical assessment has been carried out to ascertain whether the patient has any underlying medical condition which may contraindicate the use of psychotropic substances.
- (4) For the purposes of this section, a psychotropic substance is a substance which is listed in any of Schedules I to IV of the Psychotropic Substances Convention.”.>

### **Adam Ingram**

**102** After section 17, insert—

*<Code of practice: use of psychotropic substances*

#### **Psychotropic substances**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 274 (code of practice), there is inserted—

**<<Code of practice: use of psychotropic substances**

  - (1) The code of practice under section 274 must make provision about the treatment of a patient who has a mental disorder by way of psychotropic substances.
  - (2) The code of practice must, in particular, make provision regarding—
    - (a) the desirability of enabling the patient to choose, where practicable, the medical practitioner to administer such treatment;
    - (b) the need for a medical assessment prior to such treatment to ascertain any underlying medical conditions of the patient that might contraindicate such treatment;
    - (c) the need for information to be provided to the patient on the treatment options available to the patient as an alternative to the proposed treatment.
  - (3) For the purposes of this section, a psychotropic substance is a substance which is listed in any of Schedules I to IV of the Psychotropic Substances Convention.”.>

**THIS IS NOT THE MARSHALLED LIST**

**Named person**

**Nanette Milne**

- 103** In section 18, page 12, line 18, leave out <in writing> and insert <by any means or in any way>

**Jamie Hepburn**

- 39** Leave out section 18

**Jamie Hepburn**

- 40** After section 18, insert—

**<Named person not to be automatic**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) Sections 251 and 253 are repealed.
- (3) In subsection (2) of section 318 (false statements), sub-paragraph (ii) of paragraph (b) is repealed.>

**Jamie Hepburn**

- 41** In section 19, page 12, line 35, leave out subsection (3)

**Jamie Hepburn**

- 42** In section 20, page 14, line 6, at end insert—

<( ) In section 320 (appeal to sheriff principal against certain decisions of the Tribunal), paragraph (t) of subsection (1) is repealed.>

**Jamie Hepburn**

- 43\*** After section 20, insert—

**<Ability to act if no named person**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 257 there is inserted—

*“Ability to act if no named person*

**257A Ability to act if no named person**

- (1) This section applies if—
  - (a) a patient does not have a named person,
  - (b) the patient has attained the age of 16 years, and
  - (c) the patient is incapable in relation to a decision as to whether to initiate an application or appeal in the patient’s case.
- (2) In subsection (1)(c) above, “incapable” has the same meaning as in section 250 of this Act.

## **THIS IS NOT THE MARSHALLED LIST**

- (3) Each of the persons listed in subsection (9)(a) to (d) below has authority to initiate an application or appeal that may be made by the patient under section 50(1), 99(1), 100(2), 120(2), 125(2), 126(2), 163(1), 164(2), 192(2), 201(1), 204(1), 214(2), 219(2), 220(2), 264(2), 268(2), 320(2), 321(1) or 322(2) of this Act.
- (4) Each of the persons listed in subsection (9)(a) and (b) below has authority to obtain any notice or information that is to be provided under section 54(3), 60(1), 87(2)(c), 124(4) or (6), 127(7) or (11A)(b), 128(3), 129(3) or (4), 200(3), 218(4), (6) or (10)(b), 218A(4), 224(8) or (12A)(b) or 226(3) of this Act.
- (5) The reference in subsection (3) above to section 264(2), 268(2), 320(2), 321(1) or 322(2) of this Act does not apply in relation to a guardian or a welfare attorney of the patient (as that person is already entitled to make an application or appeal under that section).
- (6) In the application of subsection (4) above—
  - (a) the reference to section 87(2)(c) relates only to notice of the determination mentioned in that section (and not also to a copy of the record mentioned in that section),
  - (b) the reference to section 128(3) or 129(4) relates to a responsible medical officer's reasons only if that officer is satisfied that it is appropriate to give notice of them to a guardian or a welfare attorney of the patient (having regard to the need to ensure the patient's wellbeing and confidentiality).
- (7) Neither of the persons listed in subsection (9)(c) or (d) below has authority to act in relation to a patient by virtue of this section if the patient has made a written declaration precluding the person (or all persons) from so acting.
- (8) Subsections (2) to (5) and (7) of section 250 of this Act apply to a declaration mentioned in subsection (7) above as they apply to a nomination to which subsection (1) of that section relates (with that section to be read accordingly).
- (9) The listed persons are—
  - (a) any guardian of the patient,
  - (b) any welfare attorney of the patient,
  - (c) the patient's primary carer (if any),
  - (d) the patient's nearest relative.".>

### **Rhoda Grant**

**105\*** After section 20, insert—

#### **<Provision of independent advocacy services if no named person**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 255 (named person: mental health officer's duties etc.)—
  - (a) in subsection (4)(b) after the word "257" there is inserted "or 257B",
  - (b) in subsection (7)(b) after the word "257" there is inserted "or 257B".
- (3) In subsection (1) of section 256 (named person: application by patient etc.) after the word "257" there is inserted "or 257B".

## THIS IS NOT THE MARSHALLED LIST

(2) After section 257, there is inserted—

**“257B Provision of independent advocacy services if no named person**

- (1) This section applies if—
  - (a) the Tribunal is satisfied that the person does not have a named person;  
and
  - (b) the patient has attained the age of 16 years.
- (2) Where an application is made under section 255(4)(b) or (7)(b)(i) or 256(1)(a) of this Act the Tribunal may make an order appointing a person to provide independent advocacy services to the patient.
- (3) The Scottish Ministers may by regulations prescribe the functions under this Act that a person appointed under subsection (2) may provide to a patient.
- (4) Regulations under subsection (3) must not, however, provide for the person appointed under subsection (2) to have access to the patient’s medical records.”>

**Nanette Milne**

**108** In section 24, page 16, line 29, at end insert—

<( ) in paragraph (f) of subsection (1), after the word “patient” there is inserted “, or the patient’s named person.”>

**Carers’ involvement**

**Rhoda Grant**

**104** After section 20, insert—

*<Involvement of carers and relatives*

**Involvement of carers and relatives**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 274 (code of practice), after subsection (1) there is inserted—

“(1A) A code of practice drawn up under subsection (1) shall give guidance on the role of carers and relatives, but may not make provision for carers and relatives to have access to a patient’s medical records.”>

**Advocacy**

**Dr Richard Simpson**

**82** After section 20, insert—

*<Advocacy*

**Advocacy**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.

## **THIS IS NOT THE MARSHALLED LIST**

- (2) In section 46, after paragraph (d) of subsection (2) there is inserted—
  - “(e) any person who, to the knowledge of the managers, is providing independent advocacy services to the patient under section 259 of this Act.”.
- (3) In section 50, after subsection (3) there is inserted—
  - “(3A) The Tribunal may afford any person who, to the knowledge of the Tribunal, is providing independent advocacy services to the patient under section 259 of this Act the opportunity mentioned under subsection (2).”.
- (4) In section 52, after paragraph (g) there is inserted—
  - “(h) any person who, to the knowledge of the Commission, is providing independent advocacy services to the patient under section 259 of this Act.”.
- (5) In section 54, after paragraph (c) of subsection (3) there is inserted—
  - “(ca) any person who, to the knowledge of the responsible medical officer, is providing independent advocacy services to the patient under section 259 of this Act.”.
- (6) In section 64, after subsection (3) there is inserted—
  - “(3A) The Tribunal may afford any person who, to the knowledge of the Tribunal, is providing independent advocacy services to the patient under section 259 of this Act the opportunity mentioned under subsection (2).”.
- (7) In section 268, after paragraph (e) of subsection (6) there is inserted—
  - “(f) any person who, to the knowledge of the Tribunal, is providing independent advocacy services to the patient under section 259 of this Act.”.>

### **Dr Richard Simpson**

**83** After section 20, insert—

#### **<Access to advocacy services**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 259, after subsection (11) there is inserted—
  - “(12) Regulations may make provision for the circumstances in which providers of independent advocacy services under this Act must be—
    - (a) notified of matters relating to a patient;
    - (b) afforded an opportunity to make representations on behalf of a patient;
    - (c) afforded an opportunity to make applications on behalf of a patient.”.>

### **Dr Richard Simpson**

**84** After section 20, insert—

#### **<Review of access to advocacy**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 259, there is inserted—

## **THIS IS NOT THE MARSHALLED LIST**

### **“259A Review of access to advocacy**

- (1) The Commission must—
  - (a) monitor the availability and accessibility of independent advocacy services provided under section 259,
  - (b) from time to time, report to the Scottish Ministers on the exercise of the functions under section 259 by the bodies mentioned in subsection (3).
- (2) Each body mentioned in subsection (3) must provide the Commission with a report every 2 years, or at such other intervals as Ministers may determine, setting out—
  - (a) how it has exercised its functions under section 259 during the reporting period,
  - (b) its plans to ensure that it is in a position to secure independent advocacy services for any person requiring such services in the next reporting period.
- (3) Those bodies are—
  - (a) a local authority,
  - (b) a Health Board.
- (4) In this section, “reporting period” means—
  - (a) in the case of the first report, the period of time from the date on which this section comes into force until the date on which the first report is provided,
  - (b) in the case of a subsequent report, the period of time from the date on which the previous report is provided until the date on which the subsequent report is provided.”.>

### **Registration of advance statements**

#### **Jamie Hepburn**

- 44** In section 21, page 14, leave out line 21 and insert—
- <(b) inform the Commission—
    - (i) that a copy of the statement or document is held with the person’s medical records, and
    - (ii) of the premises at which the medical records are kept (and the personal and administrative details essential for identifying the records as the person’s).>

#### **Jamie Hepburn**

- 45** In section 21, page 14, line 23, leave out from <a> to the end of line 32 and insert <information by virtue of section 276A(2) of this Act.
- (2) The Commission must enter the information in a register of advance statements maintained by it (and mark the date on which the entry is made).>

## THIS IS NOT THE MARSHALLED LIST

### Jamie Hepburn

- 46 In section 21, page 14, line 36, leave out from <anything> to the end of line 38 and insert <an entry in the register to be inspected at a reasonable time—  
(a) by the person whose medical records are referred to in the entry,>

### Nanette Milne

- 106 In section 21, page 14, line 36, leave out <anything> and insert <any advance statement>

### Nanette Milne

- 107 In section 21, page 14, line 38, leave out <thing> and insert <advance statement>

## Advance statements: further provision

### Dr Richard Simpson

- 85 In section 21, page 15, line 7, at end insert—

#### <276D Access to advance statements

- (1) The Scottish Ministers must, by regulations, set out the circumstances where a person mentioned in subsection (2) may, for the purpose of exercising functions under this Act, access an advance statement or document withdrawing an advance statement held by a Health Board.
- (2) Those persons are—
  - (a) the patient’s named person;
  - (b) any person who, to the knowledge of the Health Board, is providing independent advocacy services to the patient under section 259 of this Act;
  - (c) a designated medical practitioner in respect of section 239(1) or 241(1) of this Act;
  - (d) a person employed by the Health Board;
  - (e) the Commission;
  - (f) the Tribunal.”.>

### Dr Richard Simpson

- 86 In section 21, page 15, line 7, at end insert—

<( ) In section 326 (orders, regulations and rules), in subsection (4)(c) after the words “to (14),” there is inserted “276D(1),”.>

### Bob Doris

- 87 In section 21, page 15, line 7, at end insert—

#### <Duty to promote advance statements

## **THIS IS NOT THE MARSHALLED LIST**

Each Health Board, working with each local authority in its area, must regularly publish and promote (in such manner as it considers appropriate and in accordance with guidance in the Code of Practice) information about—

- (a) the existence, effect and status of provisions in this Act about advance statements,
- (b) the exercise of those provisions,
- (c) the arrangements for making, revising and lodging an advance statement in relation to a person who has a mental disorder,
- (d) the support available in the Health Board area to assist a person who has a mental disorder in making, lodging or revising an advance statement.”.>

### **Effect of advance statements**

**Dr Richard Simpson**

**88** After section 21, insert—

#### **<Effect of advance statements**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 276 (advance statements: effect)—
  - (a) in subsection (1), at beginning there is inserted “Subject to subsection (3A),”,
  - (b) in subsection (3), at beginning there is inserted “Subject to subsection (3A),”,
  - (c) after subsection (3), there is inserted—

“(3A) Where the conditions in subsection (3B) apply, the person proposing the medical treatment must make an application to the Tribunal for a decision as to whether the treatment may be given or not.
- (3B) Those conditions are—
  - (a) the treatment conflicts with wishes specified in the advance statement;
  - (b) the patient’s named person objects to the medical treatment; and
  - (c) it appears to the person proposing the medical treatment or to the patient’s named person that, while the patient’s ability to make decisions about the matters referred to in paragraphs (a) and (b) of subsection (1) of section 275 of this Act, is, because of mental disorder, significantly impaired, the patient is not incapable of consenting to the treatment.
- (3C) For the purposes of this section, “incapable” means incapable of—
  - (a) acting,
  - (b) making decisions,
  - (c) communicating decisions,
  - (d) understanding decisions, or
  - (e) retaining the memory of decisions,



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by reason of mental disorder or of inability to communicate because of physical disability; but a person does not fall within this definition by reason only of a lack or deficiency in a faculty of communication if that lack or deficiency can be made good by human or mechanical aid (whether of an interpretative nature or otherwise).”.>

### **Support, conflicts of interest and safeguarding patients**

#### **Jamie Hepburn**

- 47 In section 22, page 15, line 27, leave out <, 57A(2)>

#### **Jamie Hepburn**

- 48 After section 22, insert—

##### **<Conflicts of interest to be avoided**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 291 there is inserted—

*“Conflicts of interest to be avoided*

##### **291A Conflicts of interest to be avoided**

- (1) There must not be a conflict of interest in relation to a medical examination to be carried out for the purpose of section 36(1), 44(1), 47(1), 57(2), 77(2), 78(2), 139(2), 140(2) or 182(2) of this Act.
- (2) Regulations may—
  - (a) specify circumstances in which, in the application of subsection (1) above—
    - (i) there is to be taken to be a conflict of interest,
    - (ii) there is not to be taken to be a conflict of interest,
  - (b) specify circumstances in which subsection (1) above does not apply.”.
- (3) These provisions are repealed—
  - (a) in section 36 (emergency detention in hospital)—
    - (i) paragraph (a) of subsection (3),
    - (ii) subsection (9),
  - (b) in section 44 (short-term detention in hospital)—
    - (i) paragraph (a) of subsection (3),
    - (ii) subsection (8),
  - (c) in section 47 (extension of detention pending application for compulsory treatment order)—
    - (i) paragraph (a) of subsection (2),
    - (ii) subsection (5),
  - (d) in section 58 (medical examination: requirements), subsection (5).>

## THIS IS NOT THE MARSHALLED LIST

### **Jamie Hepburn**

**49** After section 22, insert—

#### **<Safeguarding the patient’s interest**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 245 (certificates under sections 235, 236, 239 and 241), in subsection (3)—
  - (a) the word “and” immediately preceding sub-paragraph (ii) of paragraph (a) is repealed,
  - (b) after sub-paragraph (ii) of paragraph (a) there is inserted—
    - “(iii) any guardian of the patient; and
    - (iv) any welfare attorney of the patient;”.>

### **Services and accommodation for mothers**

#### **Jamie Hepburn**

**50** In section 23, page 16, line 8, leave out <, for the words “for post-natal depression,” in subsection (1)(d)> and insert—

<( ) in paragraph (d) of subsection (1), for the words “for post-natal depression,”>

#### **Jamie Hepburn**

**51** In section 23, page 16, line 11, at end insert—

<( ) after subsection (1) there is inserted—

“(1A) But a Health Board is required to provide services and accommodation under subsection (1) above only if it is satisfied that doing so would be beneficial to the wellbeing of the child.”.>

### **Absconding patients**

#### **Bob Doris**

**52** In section 25, page 17, line 14, leave out <some or all of> and insert <specific provisions in>

#### **Dr Richard Simpson**

**89** In section 25, page 17, line 14, leave out <some or all of Part 16> and insert <section 243>

#### **Dr Richard Simpson**

**90** In section 25, page 17, line 18, leave out <that Part> and insert <section 243>

#### **Dr Richard Simpson**

**91** In section 25, page 17, line 19, leave out <any of that Part> and insert <section 243>

## THIS IS NOT THE MARSHALLED LIST

### Bob Doris

- 53\* In section 25, page 17, line 21, at end insert <, or  
( ) authorise medical treatment of the types mentioned in section 234(2) or 237(3) of this Act.”.>

### Agreement to transfer prisoners

### Jamie Hepburn

- 54 In section 26, page 17, line 30, leave out from <subsection> to the end of line 33 and insert <paragraph (a) of subsection (3) there is inserted—  
“(aa) that—  
(i) a mental health officer has agreed to the making of the direction,  
or  
(ii) it has been impracticable to obtain the agreement of a mental health officer;”.>

### Meaning of mental disorder

### Dr Richard Simpson

- 55 After section 27, insert—

*<Meaning of “mental disorder”*

#### **Meaning of “mental disorder”**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In section 328 (meaning of “mental disorder”)—
  - (a) paragraph (c) of subsection (1) is repealed together with the word “or” immediately preceding it,
  - (b) before paragraph (a) in subsection (2) there is inserted—

<“(za) learning disability;  
(zb) autism spectrum disorder;”>

### Jackie Baillie

- 56 After section 27, insert—

*<Review of the meaning of “mental disorder”*

#### **328A Review of the meaning of “mental disorder”**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 328 there is inserted—

**“Review of meaning of “mental disorder”**

## **THIS IS NOT THE MARSHALLED LIST**

- (1) The Scottish Ministers must carry out a review of the definition of mental disorder no later than one year after the Mental Health (Scotland) Act 2015 receives Royal Assent.
  - (2) The purpose of the review under subsection (1) is to consider whether “learning disability” should continue to be within the meaning of “mental disorder”.
  - (3) In carrying out a review under subsection (1) the Scottish Ministers must consult such persons as they consider appropriate.
  - (4) The Scottish Ministers must—
    - (a) publish a report—
      - (i) setting out the findings of the report under subsection (1),
      - (ii) making a recommendation as to whether “learning disability” should continue to be within the meaning of “mental disorder”,
    - (b) lay a copy of that report before the Parliament.
  - (5) The Scottish Ministers must make provision by regulations for the removal of “learning disability” from the meaning of “mental disorder” where a report under subsection (4) recommends that “learning disability” should not continue to be within the meaning of “mental disorder”.
- (3) In section 326 (orders, regulations and rules), in subsection (4)(c) for the words “or 310” there is substituted “310 or 328A”.>

### **Information on adverse incidents**

#### **Adam Ingram**

**109** After section 27, insert—

*<The Commission: statistical information*

#### **Information on adverse incidents etc.**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 19, there is inserted—

#### **“19A Statistical information: further provision**

- (1) The Commission must make arrangements for the collection of the statistical information mentioned in subsection (2) in respect of patients detained in hospital by virtue of—
  - (a) this Act; or
  - (b) the 1995 Act.
- (2) That information is the annual number of—
  - (a) deaths;
  - (b) suicides;
  - (c) assaults recorded against a patient;
  - (d) recorded adverse incidents;

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- (e) occasions on which restraints have been used in relation to a patient.
- (3) The information mentioned in subsection (2) must be broken down by—
  - (a) age;
  - (b) gender;
  - (c) diagnosis;
  - (d) class of drug prescribed (where appropriate);
  - (e) Health Board;
  - (f) such other categories as may be prescribed by regulations.
- (4) The Commission must in accordance with directions given to it by the Scottish Ministers, from time to time, and not less than once in every Parliamentary session, lay before the Parliament a report summarising the findings of the information collected under subsection (1) since the laying of the last report.
- (5) Subsections (6) and (7) apply where—
  - (a) the Parliament is dissolved before the period of 12 months has elapsed since the commencement of the session of Parliament, and
  - (b) as at the date of dissolution a report under subsection (4) has not been published.
- (6) The session in which the Parliament is so dissolved is not to be regarded as a session in which a report under subsection (4) is to be published.
- (7) A report under subsection (4) must be published in the session of the Parliament which—
  - (a) next follows the session in which the Parliament is so dissolved, and
  - (b) is not itself a session in which the Parliament is so dissolved.>

### **Review of deaths in detention**

#### **Dr Richard Simpson**

110 After section 27, insert—

*<Review of deaths in detention or otherwise in hospital for treatment for a mental disorder*

#### **Scottish Ministers review of deaths in detention or otherwise in hospital for treatment for a mental disorder**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 4A, there is inserted—

*“Review of deaths in detention or otherwise in hospital for treatment for a mental disorder*

#### **4AA Review of deaths in detention or otherwise in hospital for treatment for a mental disorder**

- (1) The Scottish Ministers must carry out a review of the arrangements for investigating the death of a patient who was—
  - (a) detained in hospital by virtue of—

## **THIS IS NOT THE MARSHALLED LIST**

- (i) this Act;
- (ii) the 1995 Act; or
- (b) admitted voluntarily to hospital for the purpose receiving treatment for a mental disorder.
- (2) The review must be carried out within 2 years of this section coming into force.
- (3) In carrying out a review under subsection (1) the Scottish Ministers must consult—
  - (a) the nearest relative of a patient within the meaning of subsection (1);
  - (b) such persons as they consider appropriate.
- (4) The Scottish Ministers must—
  - (a) publish a report setting out the findings of the review under subsection (1);
  - (b) lay a copy of that report before the Parliament;
  - (c) notify those persons consulted under subsection (3) of the publication of the report.”.>

### **Detention under compulsion orders**

#### **Jamie Hepburn**

57 After section 28, insert—

#### **<Detention under compulsion orders**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (2) In section 57 (disposal of case where accused found not criminally responsible or unfit for trial), in subsection (2)—
  - (a) in paragraph (a), for the words “authorising the detention of the person in a hospital” there is substituted “(whether or not authorising the detention of the person in a hospital)”,
  - (b) for paragraph (b) there is substituted—
    - “(b) subject to subsection (4A) below, make a restriction order in respect of the person (that is, in addition to a compulsion order authorising the detention of the person in a hospital);”.>

### **Period of assessment order**

#### **Dr Richard Simpson**

111 In section 29, page 19, leave out lines 16 to 22

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**Transfer of patients to suitable hospital**

**Jamie Hepburn**

- 58 In section 35, page 22, line 25, at end insert <, or  
( ) a temporary compulsion order (see section 54(1)(c) of this Act).>

**Jamie Hepburn**

- 59 In section 35, page 22, line 26, leave out from beginning to <question,> in line 27

**Duty of Health Boards: homicide reporting**

**Dr Richard Simpson**

- 92 After section 40, insert—  
<*Duty on Health Boards and Mental Welfare Commission to review certain criminal behaviour  
by mentally disordered persons*

**Duty on Health Boards and Mental Welfare Commission to review certain criminal  
behaviour by mentally disordered persons**

- (1) The Criminal Procedure (Scotland) Act 1995 is amended as follows.  
(2) After section 63 (appeal by prosecutor in case involving insanity), there is inserted—  
“*Duty on Health Boards and Mental Welfare Commission to review certain criminal  
behaviour by mentally disordered persons*”

**63A Duty on Health Boards and Mental Welfare Commission to review certain  
criminal behaviour by mentally disordered persons**

- (1) Subsection (2) applies where a person—  
(a) is charged with a relevant offence, and  
(b) has prior to being charged with that relevant offence been—  
(i) in receipt of care and treatment from a health board under the  
Mental Health (Treatment and Care) (Scotland) Act 2003 (“the  
2003 Act”), or  
(ii) referred to a Health Board for care and treatment under the 2003  
Act.  
(2) As soon as practicable after the person is charged with a relevant offence, the  
procurator fiscal must, where it appears to the procurator fiscal that the person  
meets the conditions specified in subsection (1), notify—  
(a) the Health Board—  
(i) which provided care and treatment to the mentally disordered  
person under the 2003 Act, or  
(ii) to which the mentally disordered person was referred for care and  
treatment under the 2003 Act, and  
(b) the Mental Welfare Commission,  
that the mentally disordered person has been charged with a relevant offence.

## **THIS IS NOT THE MARSHALLED LIST**

- (3) A Health Board which has been notified under subsection (2) must—
  - (a) undertake an inquiry into the mentally disordered person’s interaction with the Health Board,
  - (b) prepare and publish a report setting out the findings of the inquiry, and
  - (c) as soon as practicable after the publication of a report under paragraph (b), prepare an action plan responding to the findings of the report.
- (4) As soon as practicable after the publication of a report and action plan under subsection (3), the Health Board must provide the report and action plan to—
  - (a) the Mental Welfare Commission,
  - (b) any natural person against whom a relevant offence has been perpetrated, provided that the Health Board has ascertained that the person to be given the information wishes to receive it.
- (5) The Mental Welfare Commission must, in accordance with directions given to it by the Scottish Ministers, from time to time, and not less than once in every parliamentary session, lay before the Parliament a report summarising the findings of the reports received since the laying of the last such report.
- (6) Subsections (7) and (8) apply where—
  - (a) the Parliament is dissolved before the period of 12 months has elapsed since the commencement of the session of Parliament, and
  - (b) as at the date of dissolution a report under subsection (5) has not been published.
- (7) The session in which the Parliament is so dissolved is not to be regarded as a session in which a report under subsection (5) is to be published.
- (8) A report under subsection (5) must be published in the session of the Parliament which—
  - (a) next follows the session in which the Parliament is so dissolved, and
  - (b) is not itself a session in which the Parliament is so dissolved.
- (9) Health Boards must, in exercising any function under this section, have regard to any guidance issued by the Scottish Ministers.
- (10) The Scottish Ministers must publish any guidance they issue for the purposes of this section.
- (11) The Scottish Ministers may revise and revoke such guidance.
- (12) For the purposes of this section, “relevant offence” means the committing of the offence of—
  - (a) murder,
  - (b) culpable homicide,
  - (c) such other offence as the Scottish Ministers may by regulations prescribe.
- (13) For the purposes of this section, “referred” means referred to a Health Board by a medical practitioner, or such other person as the Scottish Ministers may by regulations prescribe.



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- (14) The Scottish Ministers may by regulations amend subsections (1) to (9), so as to—
  - (a) incorporate within the meaning of this section persons charged with a relevant offence who have been in receipt of care and treatment under the 2003 Act from a body other than a Health Board,
  - (b) to require that body to be notified of the charging of that person and to be subject to the requirements of subsections (3) to (6).
- (15) Regulations under subsections (12) and (14) are subject to the affirmative procedure.
- (16) Regulations under subsection (13) are subject to the negative procedure.>

### **Referral to the High Court**

#### **Dr Richard Simpson**

**113** Before section 41, insert—

#### **<Referral by Tribunal to High Court**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) After section 195 there is inserted—

*“Reference to High Court by Tribunal*

#### **195A Tribunal’s powers to make reference to High Court**

- (1) This section applies where—
  - (a) a person—
    - (i) was convicted in the High Court or the sheriff court of an offence punishable by imprisonment (other than an offence the sentence for which is fixed by law); or
    - (ii) was remitted to the High Court by the sheriff under any enactment for sentence for such an offence;
  - (b) the person is subject to—
    - (i) a compulsion order; or
    - (ii) a compulsion order and a restriction order; and
  - (c) a determination or order is made under this Act changing the category of the patient’s mental disorder.
- (2) If the conditions in subsection (3) apply, the Tribunal may refer the matter to the High Court.
- (3) Those conditions are that—
  - (a) the Tribunal is satisfied that the category of the patient’s mental disorder has changed from that specified at the time at which the court made the compulsion order or compulsion and restriction order, as the case may be;

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- (b) it appears to the Tribunal that, given the change in category, it is appropriate for the patient to be remitted to the High Court for sentence for the offence for which the person was convicted; and
  - (c) the Tribunal considers that it is in the interests of justice and consistent with the principles of this Act that such a reference should be made.
- (4) In determining whether a reference is in the interests of justice, the Tribunal must have regard to the need for finality and certainty in the determination of criminal proceedings.
- (5) In considering whether or not to make a reference, the Tribunal may at any time refer to the High Court for the Court's opinion on any point on which it desires the Court's assistance; and on a reference under this subsection the High Court must consider the point referred and provide the Tribunal with its opinion on the point.
- (6) A reference under subsection (2) may be made by the Tribunal under this Act—
  - (a) on the Tribunal's own initiative;
  - (b) on application to the Tribunal by:
    - (i) the patient;
    - (ii) the responsible medical officer;
    - (iii) the Commission;
    - (iv) any other person mentioned in subsection (8).
- (7) Before making a reference to the High Court under this section the Tribunal must—
  - (a) afford the persons mentioned in subsection (8) below the opportunity—
    - (i) of making representations (whether orally or in writing); and
    - (ii) of leading, or producing, evidence; and
  - (b) whether or not such representations are made, hold a hearing.
- (8) Those persons are—
  - (a) the patient;
  - (b) the patient's named person;
  - (c) the patient's primary carer;
  - (d) any guardian of the patient;
  - (e) any welfare attorney of the patient;
  - (f) any *curator ad litem* appointed by the Tribunal in respect of the patient;
  - (g) the Scottish Ministers;
  - (i) the mental health officer;
  - (j) any other person appearing to the Tribunal to have an interest.”
- (3) The Criminal Procedure (Scotland) Act 1995 is amended as follows.
- (4) After section 61 there is inserted—

*“Reference by the Tribunal to the High Court*

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### **61A Reference by the Tribunal to the High Court**

- (1) Where the Tribunal makes a reference to the High Court under section 195A of the Mental Health (Care and Treatment) (Scotland) Act 2003, the Tribunal must—
  - (a) give to the Court a statement of its reasons for making the reference; and
  - (b) send a copy of the statement to every person who appears to them to be likely to be a party to any proceedings arising from the reference.
- (2) The High Court must hear and determine the case, subject to any directions the High Court may make, as if it were an appeal under Part VIII or, as the case may be, Part X of this Act.

### **61B Further provision on reference**

- (1) The High Court may reject the reference if the Court considers that it is not in the interests of justice that any proceedings arising from the reference should proceed.
- (2) In determining whether or not it is in the interests of justice that any proceedings should proceed, the High Court must have regard to the need for finality and certainty in the determination of criminal proceedings.
- (3) On rejecting a reference under this section, the High Court may make such order as it considers necessary or appropriate.

### **61C Supplementary provision**

- (1) The Scottish Ministers may by order make such incidental, consequential, transitional or supplementary provisions as may appear to them to be necessary or expedient for the purpose of bringing section 61A and 61B into operation.
- (2) Regulations under subsection (1) are subject to the affirmative procedure.”.>

## **Effect of restriction order**

**Jamie Hepburn**

**65** After section 42, insert—

### **<Effect of revocation of restriction order**

- (1) The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- (2) In subsection (2) of section 198 (effect of revocation of restriction order), for the words “Tribunal revoked the restriction order” there is substituted “order revoking the restriction order has effect in accordance with section 196 of this Act”.>

## **Right to information: compulsion order**

**Dr Richard Simpson**

**114** In section 44, page 27, leave out line 17 and insert—

<(1) Where—>

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### Dr Richard Simpson

115 In section 44, page 27, line 24, after <years> insert—

- <(e) there are no exceptional circumstances which, in the opinion of the Scottish Ministers, make it inappropriate to do so, the Scottish Ministers must give the information about O described in section 16C to the person mentioned in subsection (1)(c).>

### Dr Richard Simpson

116 In section 44, page 27, leave out lines 25 to 33

### Compulsion order: recorded matter

### Dr Richard Simpson

117 In section 49, page 32, line 20, at end insert—

- <( ) In paragraph (a) of subsection (2) of section 167 (powers of tribunal on application under section 149, 158, 161, 163 or 164) after “measures” there is inserted “, or any recorded matter”.>

### Involvement of curator ad litem: appeals

### Nanette Milne

118\* In section 49, page 32, line 38, at end insert—

- <( ) In section 320 (appeal to sheriff principal against certain decisions of the Tribunal)—
  - (a) after paragraph (b) of subsection (5) there is inserted—
    - “(ba)that person’s curator *ad litem*,”
  - (b) after paragraph (b) of subsection (6) there is inserted—
    - “(ba)that person’s curator *ad litem*,”
  - (c) after paragraph (b) of subsection (8) there is inserted—
    - “(ba)that person’s curator *ad litem*,”
  - (d) after paragraph (b) of subsection (9) there is inserted—
    - “(ba)that person’s curator *ad litem*.”
- ( ) In section 322 (appeal to the Court of Session against certain decisions of the Tribunal)—
  - (a) after paragraph (b) of subsection (3) there is inserted—
    - “(ba)that person’s curator *ad litem*,”
  - (b) after paragraph (b) of subsection (4) there is inserted—
    - “(ba)that person’s curator *ad litem*.”>

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**Practitioner psychologists**

**Nanette Milne**

**119** Before section 50, insert—

**<Interpretation**

In section 329 (interpretation) of the 2003 Act, in the definition of “medical practitioner”, after the word “practitioner” where it second appears there is inserted “or practitioner psychologist”.>

